

## **BILL ANALYSIS**

Senate Research Center

S.B. 107  
By: West  
Criminal Justice  
7/3/2013  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, Section 411.081 (Application of Subchapter), Government Code, could be interpreted to provide that a court's instructions to seal records through an order of nondisclosure does not require court clerks to keep certain court records confidential. Section 411.081(d) (relating to an order of nondisclosure) of the Government Code allows a person placed on deferred adjudication who satisfies certain conditions to petition the courts to prohibit criminal justice agencies from disclosing criminal history information related to his or her offense to the public.

However, while Section 481.082 (Definitions), Government Code, defines "criminal history information" as information collected by a "criminal justice agency," another related part of the same code, Section 411.081(i) (relating to noncriminal justice agencies and entities to whom criminal history record information under an order of nondisclosure may be disclosed), includes county clerks' offices in a list of "noncriminal justice agencies." Therefore, because information held by the courts could be construed not to be "criminal history information," records could be disclosed despite the existence of the order of nondisclosure.

In practical application, the Department of Public Safety of the State of Texas (DPS) is the state's official repository for criminal history records. In addition, DPS is responsible for notifying all authorized agencies and entities who purchase criminal history information from DPS when an order of nondisclosure has been issued. This notification is not sent out to purchasers who access criminal history information at the court level.

S.B. 107 closes the potential loopholes by specifically providing that, with certain exceptions, a court may not disclose information in court records subject to an order of nondisclosure to the public. The bill also directs the clerk of the court issuing an order of nondisclosure to seal all related court records after the required information is sent to DPS.

S.B. 107 amends current law relating to the disclosure by a court of criminal history record information that is the subject of an order of nondisclosure.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 411.081, Government Code, by amending Subsections (a) and (d) and adding Subsections (f-1) and (g-3), as follows:

(a) Provides that this subchapter does not apply to certain criminal history record information, including record information that is contained in court records of public judicial proceedings, except as provided by Subsection (g-3).

(d) Authorizes a person, except as provided by Subsection (e) (relating to entitling a person to petition the court only during certain time periods), to petition the court for an order of nondisclosure, rather than petition the court under this subsection, regardless of whether the person has been previously placed on deferred adjudication community

supervision for another offense. Requires the court, after notice to the state, an opportunity for a hearing, and a determination that that the person is entitled to file the petition and issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. Authorizes a person to petition the court that placed the person on deferred adjudication for an order of nondisclosure only on or after certain time periods, rather than authorizes a person to petition the court that placed the person on deferred adjudication for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Deletes existing text authorizing the payment to made only on or after certain time periods.

(f-1) Authorizes a person who petitions the court for an order of nondisclosure under Subsection (d) to file the petition in person, electronically, or by mail. Requires that the petition be accompanied by payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Requires the Office of Court Administration of the Texas Judicial System to prescribe a form for the filing of a petition electronically or by mail. Requires that the form provide for the petition to be accompanied by the required fees and any other supporting material determined necessary by the office of court administration, including evidence that the person is entitled to file the petition. Requires the office of court administration to make available on its Internet website the electronic application and printable application form. Requires each county or district clerk's office that maintains an Internet website to include on that website a link to the electronic application and printable application form available on the office of court administration's Internet website. Requires the court, on receipt of a petition under this subsection, to provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. Requires the court to hold a hearing before determining whether to issue an order of nondisclosure, except that a hearing is not required if:

(1) the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection; and

(2) the court determines that the defendant is entitled to file the petition; and the order is in the best interest of justice.

(g-3) Prohibits a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure issued under this section. Authorizes the court to disclose information contained in the court records that is the subject of an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to an agency or entity listed in Subsection (i) (relating to the noncriminal justice agencies and entities to whom criminal history record information under an order of nondisclosure may be disclosed), or to the person who is the subject of the order. Requires the clerk of the court issuing an order of nondisclosure under this section to seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk of the court sends all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety of the State of Texas under Subsection (g) (relating to the transmission of criminal history information after an order of nondisclosure is issued).

SECTION 2. (a) Provides that Section 411.081(a), Government Code, as added by this Act, and Section 411.081(g-3), Government Code, as added by this Act, apply to the disclosure on or after the effective date of this Act of information that is the subject of an order of nondisclosure issued under Section 411.081, Government Code, regardless of whether the order is issued before, on, or after the effective date of this Act.

(b) Provides that Section 411.081(d), Government Code, as amended by this Act, and Section 411.081(f-1), Government Code, as added by this Act, apply to a person who petitions the court for an order of nondisclosure on or after the effective date of this Act,

regardless of whether the person is placed on deferred adjudication community supervision before, on, or after that date.

SECTION 3. Effective date: September 1, 2013.